IN THE

Supreme Court of the United States

October Term 1977
No. 8, Original of
October Term 1965

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, and COUNTY OF SAN DIEGO,

Defendants,

UNITED STATES OF AMERICA and STATE OF NEVADA,

Interveners,

STATE OF NEW MEXICO and STATE OF UTAH,

Impleaded Defendants.

Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae on Motions for Leave to Intervene by Certain Indian Tribes.

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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The undersigned counsel, a member of the bar of this Honorable Court, hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent from counsel for the following parties has been obtained:

State of California
State of Neveda
United States of America
Fort Mojave Tribe
Quechan Tribe of the Fort Yuma Indian Reservation
Chemehueve Indian Tribe
Colorado River Indian Tribes
Federation of Indian Tribes of the Colorado River
Palo Verde Irrigation District
Imperial Irrigation District
Coachella Valley Irrigation District
The Metropolitan Water District of Southern California
City of Los Angeles
City of San Diego
County of San Diego

The consent from counsel for the following parties was requested but refused:

State of Arizona
Cocopah Indian Tribe

Counsel has read and is familiar with the two pending Motions for Intervention by several Indian Tribes, and with the memoranda of parties hereto respecting said motions. Counsel respectfully submits that the pleadings on file fail to fully emphasize the inherent complexities in the granting of the motions for intervention. The Tribes seek to invoke the jurisdiction of this Court to settle water rights claims dependent on the outcome of land title disputes presently under administrative review, district court litigation or on appeal. These separate but related land title proceedings involve indi-

viduals who are not parties to this action. By their brief, the so-called Urban Agencies invite settlement of all these claims before a Special Master.

The interest of the undersigned counsel in this case arises from the fact that he is counsel of record for numerous private parties to several completed and pending administrative and judicial proceedings involving Tribal claims.

The undersigned counsel advocates neither the granting nor the denial of the two pending motions for interventions. Counsel's purpose is simply to bring to the attention of the Court matters omitted from any of the memoranda on the subject now before the Court.

Dated: September 8, 1978.

Respectfully submitted,

DONALD D. STARK

Brief Amicus Curiae on Motion for Leave to Intervene by Certain Indian Tribes.

Statement.

In their Motion for Leave to Intervene As Indispensible Parties by the Fort Mojave Indian Tribe, the Chemehueve Indian Tribe, and the Quechan Tribe of the Fort Yuma Indian Reservation, as incorporated in their formal Petition for Intervention, the several Tribes represented by Mr. Simpson, urge that the Court undertake to make adjustments in the prior perfected rights of the various Tribes *by compensating for certain alleged boundary changes.*

By its response, The Metropolitan Water District of Southern California and the other "Urban Agencies" indicate that they do not oppose the permissive intervention of the Colorado River and Cocopah Indian Tribes "and believe a Special Master should be appointed to hear those claims together with similar boundary claims asserted by the Chemehueve, Quechan, and Fort Mojave Indian Tribes." (Response of MWD, p. 11.)

If this Court grants the motions for intervention and accepts the invitation in the response of MWD, the net effect will be that this Court would, in a proceeding before a Special Master, undertake to litigate and resolve pending land title disputes. It is respectfully submitted that a resolution of the boundary claims asserted by the Tribes must necessarily involve the rights and interests of private claimants not parties to this proceeding. Subsequent intervention by such private parties would appear to be a necessary adjunct of any determination of those issues by this Honorable Court.

ARGUMENT.

I.

If This Court Grants the Motions for Intervention and Undertakes to Make Adjustments in the Prior Perfected Rights of the Various Tribes, It Will Necessarily Resolve and Foreclose the Rights and Interests of Private Property Owners Not Parties to These Proceedings.

In its original opinion, this Court held:

> "that the United States did reserve the water rights for the Indians effective as of the time the Indian Reservations were created . . . [that] the water was intended to satisfy the future as well as the present needs of the Indian Reservations . . . [that] enough water was reserved to irrigate all the practicably irrigable acreage on the reservations . . . [and] that the only feasible and fair way by which reserved water for the reservation can be measured is irrigable acreage." (*Arizona v. California,* [1963] 373 U.S. 546, 600-01.)

Thus it is clear that the only manner consistent with the Court's prior opinion in which an adjustment in the Tribes' entitlement to water may be effected is by adjusting the number of irrigable acres beneficially owned by the Tribes. It is equally clear that the Tribes' request that this Court undertake to adjust their present perfected rights is in effect a request that this Court undertake to settle and confirm all land title disputes referenced in Exhibit "C" of the Tribes' Petition for Intervention.

This Court has heretofore declined to determine disputed boundaries of the Colorado River Indian Reservation and the Fort Mojave Indian Reservation. Thus, it held:

> "We disagree with the Master's decision to determine the disputed boundaries of the Colorado River Indian Reservation and the Fort Mojave Indian Reservation. We hold that it is unnecessary to resolve those disputes here. Should a dispute over title arise because of some future refusal by the Secretary to deliver water to either area, then the dispute can be settled at that time." (373 U.S. at 601.)

The motions for intervention now suggest that the Court reconsider its earlier determination to refrain from undertaking resolution of land title disputes. In fact, The Metropolitan Water District of Southern California and the "Urban Agencies" have invited the Court to appoint a Special Master to determine these claims of the Tribes in this proceeding. (Response of MWD, *supra*, p. 11.)

If this Honorable Court undertakes such determinations, its actions will necessarily be expanded to affect the rights and interests of private claimants, who are not now parties to these proceedings. It is respectfully submitted that in the event this Court undertakes to determine such boundary disputes, directly or indirectly, through a Special Master, it may then become entirely appropriate for private claimants to seek intervention.

II.

The Motions and Petitions for Intervention and the Memoranda Respecting the Motions Now Before the Court Do Not Adequately Apprise the Court of Separate but Related Legal Proceedings Currently Pending.

The Tribes cite a "[f]ailure in the Response [of the United States] to correctly and fully advise this Court relative to the status of boundary claims of the Tribes . . ." (Motion for Leave to Intervene, p. 9, *et seq.*) It is respectfully submitted that they also do not fully advise this Court relative to the status of certain boundary claims of the Tribes.

The undersigned counsel represents landowners claiming lands within the disputed area of the Hay and Wood Reserve of the Fort Mojave by chains of title from Swamp and Overflow Patents from the United States to the State of California and from the State of California to private patentees. Although the Tribes in their Motion for Intervention (pp. 10-11) and in their Petition for Intervention (pp. 14-18) advise the Court of the boundary claim of the Tribes to land situated within the Hay and Wood Reserve they fail to inform the Court that the Secretary of Interior has not approved and adopted the dependent resurvey alluded to in the documents on file. They also fail to advise the Court that on Juy 15, 1977, the Bureau of Land Management published its Intent to File Dependent Resurvey (42 Fed.Reg. 37446): that by letter dated August 22, 1977, a protest to the proposed filing was submitted on behalf of certain landowners represented by the undersigned counsel; that the filing date for the proposed plat was suspended

on September 9, 1977, by order dated September 2, 1977 (42 Fed.Reg. 45405); and that a formal protest pursuant to the Administrative Procedure Act was filed by letter dated September 28, 1977.

Whether in a proceeding pursuant to the Administrative Procedure Act or in a subsequent proceeding in the United States District Court, the landowners propose to assert what they believe to be the very considerable error involved in the proposed redefinition of the boundary of the Hay and Wood Reserve of Fort Mojave. As heretofore indicated, it is submitted that the water rights of the Fort Mojave Indian Reservation dependent upon such factual determination cannot be resolved by this Honorable Court without first resolving land title disputes and the interests of persons not presently parties before this Court.

The Tribes contend in their motion for intervention, at p. 13, that:

> "There are two areas in the Colorado Indian Reservation which were originally in the State of Arizona but due to avulsive action of the Colorado River are now situated west of that stream and in the State of California. Those two areas are respectfully [sic] known as the Ninth Avenue Cut-Off and the Olive Lake Cut-Off."

Although not germane to the question before the Court, the two areas are not now situated in the State of California as a result of the avulsive action of the Colorado River. Rather, they are so situated as a result of a redefinition of the boundary between Arizona and California pursuant to the Arizona-California Boundary Pact. (80 Stat. 340.)

What is germane, is that the Tribes indicate that all conflicts respecting title to the Ninth Avenue Cut-Off lands have been resolved. *United States v. Shaw Sales and Service, et al.* (U.S. Dist. Ct., Cent. Dist. Cal., No. 72-1622-R), was ordered dismissed upon settlement of the case without prejudice to re-open the same within sixty days upon good cause shown if settlement were not consummated. Through a series of stipulations, the date within which to consummate settlement was extended until August 2, 1974. Although the status of *United States v. Shaw Sales and Service, et al.*, is officially that of dismissal of the action, counsel for the parties, including the undersigned counsel, have diligently continued to effect a settlement of the action and anticipate a complete resolution of all disputes in the immediate future.

The Tribes also seek to have this Court decree to them present perfected rights in the Colorado River to irrigate 2,058 acres of irrigable and irrigated lands within the Olive Lake Cut-Off. The undersigned counsel represents all private parties in said action. (*United States v. Aranson, et al.* [CCA 9th No. 77-2295].) After full trial on the merits, judgment was filed favoring the Tribe on February 11, 1977. A timely appeal was taken to the United States Court of Appeals for the Ninth Circuit, where the matter is now pending. Briefs are on file but no schedule for argument or consideration by the Court has as yet been set. If this Court, through a Special Master, is to undertake a final determination of the Tribe's water rights dependent upon such land titles, it is respectfully suggested that it may then be appropriate for the private parties to the Olive Lake litigation to file their petition for

certiorari in that pending appeal in order that the matter be determined once and for all by this Honorable Court.

The Tribes also refer to *United States v. Brigham Young University*, U.S. Dist. Ct., Cent. Dist. Cal., No. 72-3058 MML) in which the undersigned counsel represented the defendants. A judgment was entered in that case confirming Tribal title, in consideration of the Tribe entering into long term leases of the subject land with the defendants. The Urban Agencies appear to seek review of those final judgments. Certainly, the private claimants have a concern with the finality and validity of the Tribal claims in those cases, which can properly be represented in this case, if interventions make that appropriate subject matter.

Conclusion.

It is not the intent of the undersigned counsel, by the filing of this brief *amicus curiae*, to advocate either the granting or denial of the pending motions for intervention. Counsel simply seeks to bring to the attention of this Court inherent complexities in the granting of the motions for intervention. It is submitted that an adjustment in the present perfected rights of the petitioning Tribes and the incidental resolution of land title disputes must necessarily involve the rights and interests of private claimants not parties to the instant proceedings. As counsel of record for private parties in several such land title disputes involving the Fort Mojave Indian Reservation and the Colorado River Indian Reservation, the undersigned counsel is, of course, prepared to resolve those matters in the normal forum of the United States District Court and the

Court of Appeals for the Ninth Circuit. However, the undersigned counsel is equally willing to resolve those matters, if authorized by this Court, in proceedings before a Special Master.

Dated: September 8, 1978.

Respectfully submitted,

DONALD D. STARK,

Counsel for Amicus Curiae.

Service of the within and receipt of a copy thereof is hereby admitted this ..... day of September, A.D. 1978.
